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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ALFONSE VIRGILIO, Trustee, etc. et al.,

Plaintiffs and Respondents.

v.

PICKFORD REAL ESTATE, INC. et al.,

Defendants and Appellants,

D073216

(Super. Ct. No.
37-2017-0026626-CU-BT-CTL)

APPEAL from an order of the Superior Court of San Diego County,

Joel R. Wohlfeil, Judge. Reversed.

Hahn Loeser & Parks, Steven A. Goldfarb and Michael J. Gleason, for Defendants and Appellants Ticor Title Company of California, Fidelity National Home Warranty Company, Chicago Title Company, Fidelity National Title Company, Fidelity National Disclosure Source, LLC, and Stephen Murnin.

Barnes & Thornburg, Kevin Dale Rising, Joel Robert Meyer and Karoline E. Jackson for Defendants and Appellants Pickford Real Estate, Inc., David M. Cabot, Samuel H. Kraemer, Nancy J. Brown, Moureen A. Hardy, Kathleen P. Kanan, Doris E.

Lipscomb, Le Anne McDermott, Leonora Mauger, Maria R. Turfler, and Kristin A. Young.

June Babiracki Barlow and Neil Kalin for California Association of Realtors as Amicus Curiae on behalf of Appellants.

Bottini & Bottini, Francis A. Bottini, Jr., Albert Y. Chang, and Yury A. Kolesnikov, for Plaintiffs and Respondents Alfonse Virgilio, Trustee of the Virgilio Family Trust, Janet and Michael Bologna, Lesley L. Hubbard, Gregory E. and Mary R. Stewart, Philip and Wendy Thummel, Kevin Roberts, and Christine McCormick.

In this dispute between a putative class of home-seller plaintiffs and a real estate broker, its agents, and several real estate service providers, defendants appeal from an order denying their petition to compel arbitration. The trial court found that while defendants who were signatories or agents of signatories had a valid basis for compelling arbitration, the nonsignatory defendants did not. And in the face of potentially inconsistent results, the court invoked Code of Civil Procedure section 1281.2, subdivision (c) (hereafter section 1281.2(c)) to deny arbitration as to all defendants.¹

We reverse. Because plaintiffs' claims against the nonsignatory defendants are dependent on and inextricably intertwined with the terms and obligations of the agreement containing the relevant arbitration provision, equitable estoppel allows the

¹ All statutory references are to the Code of Civil Procedure unless otherwise indicated.

nonsignatory defendants to compel arbitration. Thus, all of plaintiffs' claims are properly subject to arbitration and the trial court erred in denying defendants' petition to compel.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Parties*

Plaintiffs are a class of residential home sellers who employed Pickford Real Estate, Inc. (Pickford), a California real estate broker, between July 2009 and July 2011. For clarity, the various defendants can be organized into three separate groups: (1) Pickford, David M. Cabot (Pickford's former President and CEO) and Samuel H. Kraemer (Pickford's former officer and general counsel) (collectively the Broker Defendants); (2) Fidelity National Home Warranty Company, Ticor Title Company of California, Chicago Title Company, Fidelity National Title Company, and Fidelity National Disclosure Source LLC (all of whom are wholly- owned subsidiaries of nonparty Fidelity National Financial, Inc. (FNF)) , and Stephen J. Murnin, FNF's vice president (collectively the Fidelity Defendants); and (3) certain Pickford real estate agents: Nancy J. Brown, Moureen A. Hardy, Kathleen P. Kanan, Doris E. Lipscomb, Le Anne McDermott, Leonora Mauger, Maria R. Turfler, and Kristin A. Young (collectively the REA Defendants).

B. *The Residential Listing Agreements*

After selecting Pickford to help sell their home, each plaintiff and Pickford entered into a Residential Listing Agreement (RLA). The RLAs are a ubiquitous feature of residential real estate transactions, giving the broker an exclusive period to market the property and use the Multiple Listing Service (MLS) that amplifies the search. The

RLAs set the terms of the broker's compensation, and they grant the broker authority to contract with third parties for relevant real estate services.

Each RLA here contained a standard arbitration clause section:²

ARBITRATION OF DISPUTES: (1) Seller and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration The parties shall have the right to discovery in accordance with California Code of Civil Procedure § 1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. . . . Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act. [¶]

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. [¶]

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE

² Some of the RLA arbitration clause sections were initialed; others were not. For plaintiff Hubbard, neither party initialed the section at issue; for plaintiffs Janet and Michael Bologna, Philip and Wendy Thummel, and Kevin Roberts, they initialed the clause but Pickford did not; and for plaintiffs Virgilio, Gregory and Mary Stewart, and Christine McCormick, each party and Pickford initialed the clause.

'ARBITRATION OF DISPUTES' PROVISION TO
NEUTRAL ARBITRATION."

C. *The Residential Purchase Agreements*

Each plaintiff also entered into a Residential Purchase Agreement (RPA).

Whereas the RLAs help to initiate the broker-client relationship and set the terms of the broker's compensation, the RPAs have numerous functions for several parties. First, they are offers to purchase real property. Once agreed to and properly executed, RPAs effectuate the transaction between buyer and seller. They also provide directives and compensation terms to the brokers and real estate service providers identified in the RPA, which may include the escrow company, title company, home inspection company, termite inspection company, hazard disclosure company, and specialty inspectors for the roof, foundation, plumbing, electrical, heating and air conditioning. The RPAs contain the following arbitration clause:³

B. ARBITRATION OF DISPUTES:

Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. . . . The parties shall have the right to discovery in accordance with Title 9 of Part 3 of the Code of Civil Procedure Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. . . . [¶]

³ Each plaintiff initialed the arbitration clause in their respective RPA.

"NOTICE: BY INITIALING IN THE SPACE BELOW
YOU ARE AGREEING TO HAVE ANY DISPUTE
ARISING OUT OF THE MATTERS INCLUDED IN THE
'ARBITRATION OF DISPUTES' PROVISION DECIDED
BY NEUTRAL ARBITRATION AS PROVIDED BY
CALIFORNIA LAW [¶]

"WE HAVE READ AND UNDERSTAND THE
FOREGOING AND AGREE TO SUBMIT DISPUTES
ARISING OUT OF THE MATTERS INCLUDED IN THE
'ARBITRATION OF DISPUTES' PROVISION TO
NEUTRAL ARBITRATION."

D. *Plaintiffs' Claims*

In February 2015, Janet and Michael Bologna filed a putative class action against the Broker Defendants in San Diego County. After defendants moved to compel arbitration, the Bolognas dismissed their suit without prejudice. In February 2016, the Bolognas joined by other plaintiffs then brought suit for the same claims in Contra Costa County, and the court transferred the action to San Diego County.

Plaintiffs' claims all stem from a principal allegation: Defendants acted in concert to effectuate a fraudulent scheme in which Pickford selected the Fidelity Defendants as plaintiffs' real estate service providers in exchange for kickbacks styled as sublicensing fees. Plaintiffs further allege that the kickbacks disguised as sublicensing fees were paid pursuant to sublicensing agreements, the defendants used specific software called TransactionPoint to help carry out the fraud, and the plaintiffs were entirely unaware of the scheme throughout the real estate transactions. Plaintiffs brought specific claims for: (1) breaches of the broker's fiduciary duty for failure of disclosure and for accepting undisclosed payments; (2) aiding and abetting breaches of the broker's fiduciary duty;

(3) violation of Civil Code section 1710, subdivision (3); (4) violation of Business & Professions Code section 17200; (5) Constructive Fraud; (6) Unjust Enrichment; and (7) Accounting.⁴

E. *The Trial Court's Order Denying Defendants' Petition to Compel Arbitration*

In September 2017, defendants filed a petition to compel arbitration of all claims against all defendants. They argued that the RLA and RPA each amounted to a valid written arbitration agreement encompassing all claims at issue; the Broker Defendants were entitled to compel arbitration as signatories; the REA Defendants were entitled to compel arbitration as agents, or alternatively, as third-party beneficiaries or via equitable estoppel; and the Fidelity Defendants were entitled to compel arbitration via equitable estoppel. Plaintiffs opposed the petition, contending that even if the Broker Defendants could compel arbitration as signatories, the court should apply section 1281.2(c) to deny arbitration as to all defendants to avoid the risk of inconsistent results. In turn, defendants maintained that because the parties had not chosen to apply California law to their agreements, section 1281.2(c) was inapposite.

In its order denying defendants' petition to compel, the court found that both the RLA and RPA contained choice-of-law clauses providing for the application of California law to the arbitration provisions. The court further found that Pickford (as a signatory) and the REA Defendants (as Pickford's agents) could compel arbitration on the

⁴ Plaintiffs limited the Civil Code section 1710, subdivision (3) and constructive fraud claims to Pickford and the REA Defendants but brought the other five claims against all defendants.

basis of the RLA and RPA arbitration provisions, and it determined that the claims at issue fell within the scope of both arbitration clauses. Yet the court also concluded that plaintiffs' claims against the Fidelity Defendants were "founded upon violations of California law and tort duties, not contract obligations" and were "not premised on terms within either the RLA or the RPA, but instead was accomplished via a series of sublicensing agreements" with real estate service providers. Furthermore, "[t]he conduct by the brokers of 'suggesting' real estate . . . service providers was not conduct defined or required by the subject RLA and RPA contracts." On those grounds, the court found that equitable estoppel did not allow the Fidelity Defendants to compel arbitration. Because the court was then faced with the prospect of inconsistent results between the litigation and arbitration, it invoked section 1281.2(c) to deny the signatory defendants' motion to compel arbitration in its entirety.

DISCUSSION

Defendants' appeal requires that we consider three major issues: (1) whether plaintiffs' claims fall within the scope of a valid arbitration agreement contained in either the RLAs or RPAs; (2) whether the Broker Defendants and the REA Defendants are entitled to compel arbitration as signatories and agents of signatories; and (3) whether equitable estoppel allows the Fidelity Defendants to compel arbitration. We discuss each in turn.

A. *Standard of Review*

This court reviews de novo an appeal from an order denying a petition to compel arbitration where no conflicting extrinsic evidence exists.⁵ (*Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, 785 (*Garcia*) [de novo review; affirming use of equitable estoppel to compel arbitration]; *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 680 ["[w]hether an arbitration agreement is binding on a third party (e.g., a nonsignatory) is a question of law subject to de novo review"]; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 226, fn. 9 (*Goldman*) ["In California, absent conflicting evidence, we review the issue de novo . . . as the question is whether the undisputed facts constitute a sufficient legal basis for the application of equitable estoppel." (Citation omitted.)]; *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 267 (*Boucher*) [de novo review; reversing trial court's decision declining to apply equitable estoppel to compel arbitration]; *In re Tobacco Cases I* (2004) 124 Cal.App.4th 1095, 1105 [where there is " 'no conflict in the extrinsic evidence or the conflicting evidence is entirely written, a reviewing court is not bound by the finding of the trial court, but instead subjects the [arbitration] contract to independent review' "].) Because there are no facts in dispute here, we review the issues in this appeal under a de novo standard.

⁵ Plaintiffs argue that the trial court's order, except its decision to apply section 1281.2(c), should be reviewed for abuse of discretion. As stated in the opinions plaintiffs cited, this would be correct if there were facts in dispute. (See, e.g., *Birl v. Heritage Care, LLC* (2009) 172 Cal.App.4th 1313, 1318–1319.)

B. *The Validity and Enforcement of the Arbitration Agreements*

When a party to an arbitration agreement petitions to compel arbitration, the court must first "determine [whether] an agreement to arbitrate the controversy exists." (§ 1281.2; see also *Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal.App.4th 1351, 1363 [arbitration agreement is an essential jurisdictional prerequisite to compel arbitration]; *Romo v. Y-3 Holdings, Inc.* (2001) 87 Cal.App.4th 1153, 1158 [same].) In doing so, California's "ordinary rules of contract interpretation" apply. (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 185; see also *Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co.* (1998) 68 Cal.App.4th 83, 89.) Therefore, the court interprets "words in their ordinary sense, according to the plain meaning a layperson would attach to them." (*Gravillis v. Coldwell Banker Residential Brokerage Co.* (2006) 143 Cal.App.4th 761, 774–775 (*Gravillis*).) "In construing arbitration provisions, courts may also consider the subject matter of the agreement and the industry involved." (*Ibid.*)

1. *The Arbitration Clause in the RPA Is Valid and Covers Plaintiffs' Claims.*

Defendants argue that based on arbitration provisions in both the RLAs and RPAs, all of plaintiffs' claims are subject to arbitration. They rely heavily on *Laymon v. J. Rockcliff, Inc.* (2017) 12 Cal.App.5th 812 (*Laymon*), a case in which other plaintiffs raised seemingly identical claims against the Fidelity Defendants and other broker defendants. Plaintiffs respond that their claims fall outside the scope of both the RLA and RPA arbitration clauses. Specifically with respect to the RLAs, they contend the clause only applies to claimed breaches of the seller's obligation to pay compensation to the broker. They assert *Laymon* is unpersuasive in concluding that inclusion of a request

for disgorgement means that plaintiffs' claims bear on the obligation to pay compensation under the RLA and thus fall within the scope of the RLA arbitration clause. (12 Cal.App.5th at pp. 821–822.)

We need not debate the precise scope of the RLA arbitration provision because the RPA provides a sufficient basis to compel arbitration in this case. In reaching this conclusion we begin with the text. The RPA states that "*Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s)*, who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker."⁶ (Italics added.) Because the dispute here includes the broker, the plain terms of the RPA's broad arbitration clause cover plaintiffs' claims. (See *Gravillis*, *supra*, 143 Cal.App.4th at p. 775.)

2. *The RPA's Arbitration Clause Is Enforceable by the Broker Defendants and REA Defendants.*

The Broker Defendants may compel arbitration against plaintiffs because the RPA's arbitration clause expressly provides that right to the Broker. (*Nguyen v. Tran* (2007) 157 Cal.App.4th 1032, 1037–1038 (*Nguyen*) [broker entitled to enforce real estate purchase agreement arbitration clause based on express language of the provision].) The REA Defendants, in turn, may compel arbitration on the basis of their "preexisting agency relationship" with Pickford. (*Id.* at pp. 1036–1037; see also *Thomas v. Westlake*

⁶ This clause appears to come from what is referred to in *Laymon* as the "2010 version" of the RPA. (12 Cal.App.5th at p. 818.) *Laymon* dismissed a plaintiffs' cross-appeal with regard to this provision and did not address any substantive issues regarding its scope. (*Id.* at p. 825.)

(2012) 204 Cal.App.4th 605, 614; *Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 766 [sales agent succeeded in enforcing arbitration provision in purchase contract between buyer and seller, even though the sales agent was not a party to the contract].) Plaintiffs argue that the REA Defendants cannot enforce the arbitration agreement via the agency exception because they are being sued for their independent misconduct, not merely as agents of Pickford. But plaintiffs' claims do not include allegations of specific independent misconduct outside of their activity as agents of Pickford, and they assert that Pickford is liable for the REA Defendants' acts under the doctrine of respondeat superior. Therefore, although we decline to decide whether the RLA's arbitration clause covers plaintiffs' claims, we agree with the trial court that the Broker and REA Defendants can invoke the RPA to compel arbitration.

3. *On These Facts, Equitable Estoppel Allows the Nonsignatory Fidelity Defendants to Compel Arbitration Against Plaintiffs.*

Plaintiffs allege that the Broker and REA Defendants schemed to select the Fidelity Defendants as real estate service providers in exchange for kickbacks, without any disclosure to plaintiffs. Plaintiffs claim these fraudulent acts amount to breaches of a broker's fiduciary duty to its clients, statutory violations, and constructive fraud, and that defendants were unjustly enriched.

The Fidelity Defendants seek to arbitrate these claims by enforcing the RPA arbitration provision via equitable estoppel. They contend plaintiffs' claims are inextricably intertwined with the contractual obligations imposed by the RPA because the RPA is necessary to establish crucial facts as well as the broker's duties, the alleged

misconduct, any damages, and the Fidelity Defendants' defenses. In response, plaintiffs argue the RPA is incidental to the kickback scheme, which relies instead on sublicensing agreements between Pickford and the Fidelity Defendants, and they emphasize that the claims do not formally rely on or reference any specific contractual terms.

When nonsignatories seek to compel arbitration against a signatory, equitable estoppel prevents a signatory from taking the benefits of the terms and obligations of a contract without the burden of the arbitration provision; similarly, it prevents signatories alleging concerted misconduct among signatories and nonsignatories from naming nonsignatories to avoid arbitration altogether. (*Goldman, supra*, 173 Cal.App.4th at p. 221 [the "purpose[] of the doctrine [is] to prevent a party from using the terms or obligations of an agreement as the basis for his claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement"]; *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713 (*Metalclad*) [equitable estoppel applies "when a party has signed an agreement to arbitrate but attempts to avoid arbitration by suing nonsignatory defendants"]; see generally 19 Witkin Sum. Cal. Law (11th ed. 2017), Equity, § 212.)

In California, the standard for whether a nonsignatory may enforce an arbitration clause based on equitable estoppel is whether the claims against the nonsignatory are dependent on or inextricably intertwined with the contractual obligations of the

agreement containing the arbitration clause.⁷ (See, e.g., *Goldman, supra*, 173 Cal.App.4th at pp. 229–230 ["equitable estoppel applies only if plaintiffs' claims against the nonsignatory are dependent upon, or inextricably bound up with, the obligations imposed by the contract plaintiff has signed with the signatory defendant"]; *Boucher, supra*, 127 Cal.App.4th at pp. 271–272 [equitable estoppel applies "when the causes of action against the nonsignatory are 'intimately founded in and intertwined' with the underlying contract obligations"]; see also *JSM Tuscan, LLC v. Superior Court* (2011)

⁷ Defendants argue for a broader variation of the standard, that equitable estoppel applies whenever (1) a signatory plaintiff's claims against a nonsignatory are based on the same facts and are inherently inseparable from those against a signatory or (2) a signatory alleges substantially interdependent and concerted misconduct by signatories and nonsignatories. (See *Metalclad, supra*, 109 Cal.App.4th at p. 1713 [applying equitable estoppel where the claims against a nonsignatory are " 'based on the same facts and are inherently inseparable' from arbitrable claims against signatory defendants' "].) Such circumstances, while certainly relevant to the analysis, are not independently dispositive. (See *Goldman, supra*, 173 Cal.App.4th at p. 219 ["In any case applying equitable estoppel to compel arbitration despite the lack of an agreement to arbitrate, a nonsignatory may compel arbitration only when the claims against the nonsignatory are founded in and inextricably bound up with the *obligations imposed by the agreement containing the arbitration clause*."].) Although defendants rely heavily on *Metalclad* in advocating a more expansive standard, we do not read the case quite so broadly. Consistent with other California precedent, the *Metalclad* court analyzed the relationship between the contractual obligations and the claims and, in doing so, considered the relationship between the signatory and nonsignatory. (See *Metalclad*, at p. 1717 ["The nexus here between Metalclad's claims against [the nonsignatory parent] and the underlying contract with [the signatory subsidiary], *as well as* the integral relationship between the [nonsignatory parent] and [signatory subsidiary], persuades us equitable estoppel should apply. . . . Metalclad's breach of contract claim against [the nonsignatory defendant] *could not be more intimately founded in and intertwined with* the underlying [signatory defendant] contract." (Italics added; internal quotation marks and citations omitted.)) Defendants likewise point to *Garcia, supra*, 11 Cal.App.5th 782, 787, but there too, the court's analysis is wholly consonant with prior precedent. (*Ibid.* [equitable estoppel applies because "all of [plaintiff's] claims [against nonsignatory defendant] are intimately founded in and intertwined with his employment relationship . . . which is governed by the employment agreement compelling arbitration"].)

193 Cal.App.4th 1222, 1228; *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1287.)

Under this standard, the court analyzes the relationship between the claims and the contract obligations and, in doing so, also considers the relationships among the parties (e.g. whether there is a parent/subsidiary relationship) as well as the relationships among the claims (e.g. whether they allege interdependent misconduct and whether the claims against nonsignatories are derivative of those against signatories). (See *Metalclad, supra*, 109 Cal.App.4th at p. 1713 ["Courts applying [the doctrine] against a signatory have looked to the relationships of persons, wrongs and issues, in particular whether the claims that the nonsignatory sought to arbitrate were intimately founded in and intertwined with the underlying contract obligations." (Internal quotation marks omitted.)].)

Because the alleged scheme is based on the real estate transaction itself, plaintiffs' claims depend on the obligations imposed by the RPA. The RPA forms the basis for the arrangement among the various actors in a real estate transaction, including the buyer, seller, broker, agents, and real estate service providers. It identifies and specifies directives to the real estate service providers. It also addresses the compensation to be paid to such third parties, allowing the contracting parties to set any limits on their compensation. Furthermore, the RPA shapes the broker's duties to its clients. (See, e.g., *Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 755–758 [affirming summary judgment because the plaintiff failed to establish that the broker owed him a fiduciary duty that the contract expressly contradicted].) The RPA is thus a necessary link in the scheme plaintiffs allege; without it, the scheme could not have occurred. Furthermore, plaintiffs claim there was interdependent misconduct among the signatories and nonsignatories,

and critically here, the claims against the nonsignatory Fidelity Defendants are derivative of those against the signatories. But for the primary liability of the Broker Defendants, there would be no secondary liability of the Fidelity Defendants. Altogether, plaintiffs' claims are thus inextricably bound up with the RPA's obligations.

The distinction between these facts and those in *Goldman* is instructive. There, the court found that equitable estoppel did not allow nonsignatory defendants to compel arbitration against signatory plaintiffs. (*Goldman, supra*, 173 Cal.App.4th at pp. 223–226.) The plaintiffs claimed that tax and legal professionals had defrauded them by recommending and establishing a tax avoidance scheme that included the creation of offshore entities. (*Ibid.*) To compel arbitration, the nonsignatory defendants relied on arbitration provisions contained in the offshore entities' founding agreements that the professionals created as part of the tax avoidance scheme, but the court found no link whatsoever between plaintiffs' claims and those agreements' terms or obligations. (*Ibid.*) In contrast, here the RPA is the central document governing the relationship among the many actors working to consummate the real estate transaction. If the *Goldman* professionals had drafted different founding agreements for a separate corporate form in another offshore state, it would have had no effect on the plaintiffs' claims. Not so here. This scheme depended on the relationships governed by the RPA and its directives regarding the specific actions of several parties to the transaction. Thus plaintiffs' claims depend on and are inextricably intertwined with the obligations imposed by the RPA.

Plaintiffs additionally argue that equitable estoppel does not apply because their claims are based not on contract law but on statutory violations and tort law. This logic

"ignores the fact that a claim ' 'arising out of' ' contract does not need to be contractual." (*Garcia, supra*, 11 Cal.App.5th at p. 786, citing *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686 ["It has long been the rule in California that a broadly worded arbitration clause, such as we have here, may extend to tort claims that may arise under or from the contractual relationship."].) The claims here arise from the relationship among the broker, home sellers, and real estate service providers, which is governed by the RPA. Thus, while the claims are not formally contractual, they "arise out of" the contract.

Because plaintiffs' claims against the nonsignatory Fidelity Defendants are dependent on and inextricably intertwined with the terms and obligations of the RPA, equitable estoppel allows the Fidelity Defendants to compel arbitration. Thus, arbitration is available as to all—not just some—defendants. And without any risk of inconsistent results between two fora, it is unnecessary for us to consider the application of section 1281.2(c).

DISPOSITION

The order denying defendants' petition to compel arbitration is reversed with directions to enter a new order granting the petition. Defendants are entitled to costs on appeal.

DATO, J.

WE CONCUR:

NARES, Acting P. J.

GUERRERO, J.